

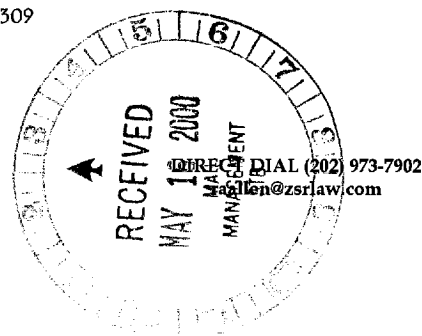
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RICHARD A. ALLEN

May 16, 2000



BY HAND

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Ex Parte No. 582 (Sub-No. 1) – Major Railroad Consolidation Procedures

Dear Secretary Williams:

Enclosed for filing in the above-referenced matter are an original and 25 copies of the Initial Comments of the Texas Mexican Railway Company. Also enclosed is a 3-1/2" computer disk in WordPerfect 5.1 format, which is capable of being read by WordPerfect for Windows 7.0.

Sincerely,

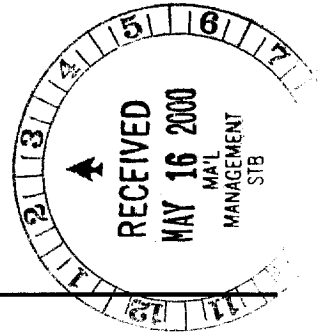
Richard A. Allen

Counsel for the Texas Mexican
Railway Company

Enclosures

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Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 582 (Sub.-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

INITIAL COMMENTS OF THE TEXAS MEXICAN RAILWAY COMPANY

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May 16, 2000

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 582 (Sub.-No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

INITIAL COMMENTS OF THE TEXAS MEXICAN RAILWAY COMPANY

Pursuant to the Board's Advance Notice of Public Rulemaking (served March 31, 2000), the Texas Mexican Railway Company ("Tex Mex") submits the following initial comments with respect to the Board's announced intention to consider revisions to its major merger rules. Tex Mex appreciates the opportunity to present its views to the Board.

Introduction and Statement of Interest

Tex Mex, founded in the mid-nineteenth century, is a regional railroad that owns and operates over a 157-mile line between Corpus Christi and Laredo, Texas, the major railroad gateway between the United States and Mexico, and also operates over some 400 miles of trackage rights in Texas from Corpus Christi to Houston and Beaumont. Tex Mex connects at Beaumont with the Kansas City Southern Railway (KCS) and at Laredo with Transportacion Ferroviaria Mexicana, S.A. de C.V. (TFM), a Mexican railroad whose shares are owned by transportation conglomerate Transportacion Maritima Mexicana (TMM), Kansas City Southern Industries (KCSI), the owner of KCS, and the Mexican government. TFM operates Mexico's

Northeast rail concession, which links Laredo with Mexico City and major industrial centers throughout Mexico.¹

For most of its long history, Tex Mex has been Mexican-owned. The Mexican government itself owned the railroad from 1916 until 1982, when it sold Tex Mex to TMM. In 1995, TMM sold a 49 percent stake in Tex Mex to KCSI; TMM retained a 51 percent share, which it continues to hold today.²

Tex Mex provides a critical bridge between the systems of TFM in Mexico and KCS in the central United States, and the three carriers together form a major, vitally important north-south rail corridor facilitating trade and commerce between the two countries through the Laredo gateway. Tex Mex also interchanges a large amount of U.S.-Mexico rail traffic with Burlington Northern Santa Fe Railroad (“BNSF”) at Robstown, Texas, near Corpus Christi.

Tex Mex’s interest in this proceeding arises not from any particular contemplated transaction involving itself, its sister company TFM, or its majority parent TMM, but rather from the long-term importance of the cross-border issues that the Board has announced it will consider in this proceeding. Tex Mex’s long history as a U.S. railroad predominately owned by non-U.S. entities and its current position as a key link in the north-south trade between the United States and Mexico gives Tex Mex a vital interest in those issues and makes its well qualified, we submit, to comment on them.

¹ Prior to 1997, the Mexican government owned the Mexican railway system, known as Ferrocarriles Nacionales de Mexico (FNM). In 1997, the government privatized the Northeast region, the first of four regions of the FNM system to be privatized. TFM won the concession to operate the Northeast region and began operating it in 1997.

² TMM and KCSI own 51 percent and 49 percent, respectively, of Mexrail, Inc., a Delaware corporation that owns 100 percent of the shares of Tex Mex. Mexrail, Inc. also owns the U.S. half of the International Railroad Bridge between Laredo and Nuevo Laredo.

Tex Mex's Position

At this time, Tex Mex's principal interest in this proceeding is to urge the Board to propose no changes in its merger rules that would alter the salutary and long-standing laws and policies of the United States relating to railroads that have rejected restrictions on ownership or other impediments to transactions and the flow of capital based on citizenship and nationality. The policies of the United States in that regard were strongly reinforced recently by the North American Free Trade Agreement (NAFTA), which has had a tremendously beneficial effect on trade generally, and rail traffic in particular, between the United States and Mexico. Some statements in the Board's Advance Notice of Proposed Rulemaking ("ANPRM") cause Tex Mex some concern about the Board's intentions in this respect.

Since the enactment of the first Interstate Commerce Act in 1888, Congress has, quite deliberately, placed no restrictions on ownership of interests in railroads operating in the United States based on citizenship or nationality.³ From the beginning, Tex Mex and other railroads in the United States have been owned or controlled by Mexican and Canadian entities, and a number of railroads controlled by U.S. entities have also operated freely in Canada. The complete freedom of cross-border ownership and flow of capital has caused no discernible problem over the last century. On the contrary, these railroads are integral parts of a North American railroad system that is the envy of the world. The freedom of cross-border ownership and flow of capital in the rail industry has also encouraged cross-border joint ventures between U.S. and non-U.S. transportation companies, of which Tex Mex and its affiliate TFM are prime examples.

³ This is in contrast, for example, to the aviation industry, in which Congress has limited the degree of foreign ownership of U.S. air carriers. 49 U.S.C. § 40102(a)(2), (15) .

The spirit of free trade that has always been characteristics of U.S. railroad statutes and regulations was greatly reinforced by NAFTA, which took effect on January 1, 1994. NAFTA has contributed to an environment in which trade among the United States, Mexico and Canada has grown enormously. According to a recent release by the Office of the U.S. Trade Representative, annual trilateral trade among the three NAFTA countries has nearly doubled since NAFTA came into force, from less than \$289 billion in 1993 to more than \$567 billion.

Tex Mex's experience from 1995 to the present, reflecting NAFTA's implementation on January 1, 1994, the creation of the TMM-Tex Mex-KCS venture in 1995, and the expansion of Tex Mex's system resulting from the Board's grant of trackage rights in the UP/SP merger proceeding in 1996, illustrates, specifically in the railroad context, the growth in cross-border trade and the benefits to be realized from cross-border cooperation in the free-trade environment of NAFTA. In 1995, loaded freight car crossings between FNM (the national Mexican carrier) and Tex Mex totaled 22,433 cars, and in 1996, 28,016 cars; in 1997, loaded freight car border crossings involving interchange between TFM and Tex Mex reached 45,574 cars; in 1998, 58,628 cars; and in 1999, 72,945 cars. Moreover, for the first four months of 2000, the total is 23,219 loaded cars, exceeding the total for the same period of 1999 by approximately 7.5 percent.

Nor has this growth come at the expense of others. Tex Mex believes that the number of loaded freight cars crossing the U.S.-Mexico border during the same period between the Missouri Pacific Railway Company (1995-96) and Union Pacific (1997-99), on the one hand, and FNM and TFM, have shown a similarly increasing trend.

Tex Mex believes that the continued growth of cross-border rail traffic and the continued development of the North American rail system will be promoted by maintaining the long-

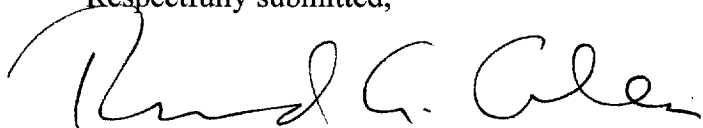
standing freedom of cross border ownership and flow of capital for railroads operating in the United States. Some statements in the ANPRM could be read to suggest that the Board might be considering departures from that policy. In the ANPRM, the Board said that it will review in this proceeding various “cross-border issues.” The Board noted in particular that, during the hearings that preceded the ANPRM, it had heard a number of “concerns over potential harms to the nation’s interests” regarding the possibility of a Canadian railroad merging with a large U.S. railroad, as CN and BNSF have proposed. The Board cited Transportation Secretary Slater’s testimony that such a proposal would lead to “‘yet another uncertainty: the adequacy, consistency, and effectiveness of extra-territorial oversight,’ most notably with respect to [the Federal Railroad Administration’s] ability to exercise its safety authority” and “could lead to traffic shifts that could have significant adverse financial impacts on U.S. ports and waterway systems.” The Board also touched on concerns that had been expressed by the Department of Defense that, as the Board put it, “predominant foreign control of a large U.S. railroad might adversely affect our nation’s defense operations.” Finally, the Board cited to testimony that cross-border mergers could unfairly disadvantage domestic grain and lumber interests in competing against Canadian commodities in the U.S. market.

Tex Mex, quite literally the linchpin of a multinational rail system linking the U.S. and Mexico, is uniquely positioned to appreciate the enormous public benefits to be derived from vigorous and robust cross-border trade. From this vantagepoint, Tex Mex urges the Board, in reviewing its merger rules, not to revise those rules to impose special burdens or requirements on transactions subject to 49 U.S.C. § 11323 that involve a non-U.S. entity. To do so, Tex Mex submits, would be to contrary to the laws and policies of the United States governing railroads

and to spirit of the NAFTA. Doing so would also impair rather than promote the development of an integrated North American railroad system and the growth of cross border rail traffic.

At this time, Tex Mex has no comments or proposals on the other issues discussed in the ANPRM. Tex Mex may address other issues at later stages of the proceeding, in response to comments of other parties or further proposals by the Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being the most prominent part.

Richard A. Allen

Scott M. Zimmerman

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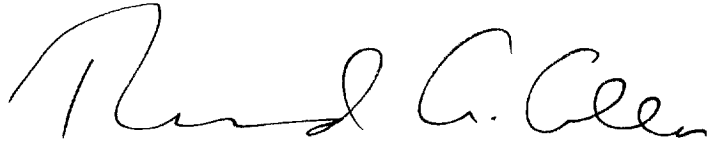
(202) 298-8660

*Attorneys for the Texas Mexican
Railway Company*

May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2000, I served a copy of the foregoing Initial Comments of the Texas Mexican Railway Company on all the parties of record in this docket.

A handwritten signature in black ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Allen" following in a similar style. The signature is written over a horizontal line.

Richard A. Allen